87-1335

No. _____

Supreme Court, U.S.
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In The

# Supreme Court of the United States

October Term, 1988

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RONALD A. BRAVERMAN,

*Petitioner,*

vs.

UNITED STATES OF AMERICA,

*Respondent.*

—o—

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

—o—

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## QUESTIONS PRESENTED

1. In light of the charging perjury statute, 18 U.S.C. § 1623, and its express congressional intent and purpose to afford a right of recantation to even knowing, intentional perjurers, is it a violation of both the Sixth Amendment and the Due Process Clause of the Fifth Amendment, as well as supervisory fairness, for an immunized federal grand jury witness' retained counsel to fail to advise him of his statutory right of recantation and to fail to take any steps whatsoever to permit either evaluation or implementation of that recantation right, and where neither the government, nor the grand jury foreperson, nor the trial court which immunized and ordered the witness' testimony, advised the witness of that right—thereby requiring dismissal of the witness' subsequent indictment under 18 U.S.C. § 1623 for his alleged perjurious grand jury testimony?

2. As the result of various ambiguities, imprecisions and divergences in and between (i) the questions and answers constituting Petitioner's allegedly false testimony as quoted in the charges, (ii) the indictment's statement of the alleged contrasting truth, and (iii) the frequent *paraphrasings,* within such "truth paragraphs," of the previously quoted alleged falsehoods—among other related defects, do the surviving counts of Petitioner's indictment under 18 U.S.C. § 1623 charge him with "perjury by implication," or are they otherwise legally insufficient, within the meaning, principles and approaches of *Bronston v. United States,* 409 U.S. 352 (1973), and its progeny in the circuits? In holding that some but not all of the perjury charges against Petitioner should have been dismissed on account of such defects in the indictment, is the Sixth Cir-

cuit's decision in this case in conflict with the limitations on federal perjury prosecutions articulated by this Court in *Bronston v. United States, supra,* as well as the rules fashioned by other circuits, especially those developed in light of *Bronston,* with respect to the criteria to be used by courts in evaluating facial challenges to perjury indictments and in determining the legal sufficiency of such charges? In so holding, has the Sixth Circuit also so far departed from its own applicable decisions, as to call for the exercise of this Court's supervisory powers to correct a miscarriage of justice which Petitioner has thereby suffered? Does the conflicting and confusing state of the law of perjury in the various circuits in all these respects, as it has evolved since *Bronston,* demonstrate a critical need for this Court to clarify that law and unify it?

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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## OPINIONS BELOW

The opinions below, none of which were published, are described in the statement of *jurisdiction, infra.*

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## JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). The opinion of the United States Court of Appeals for the Sixth Circuit in *United States of America v. Ronald A. Braverman* was entered on September 25, 1987,

and is printed in Appendix A. That Court's order denying both rehearing and suggestion for rehearing *en banc,* which is printed in Appendix C, was entered on December 10, 1987. On July 17, 1985, the United States District Court for the Northern District of Ohio, Eastern Division, Hon. Ann Aldrich Presiding, also entered a memorandum and order, which is printed in Appendix B.

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## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

*UNITED STATES CONSTITUTION*

*Amendment 5*

No person shall . . . be deprived of life, liberty, or property, without due process of law . . . .

*Amendment 6*

In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.

*PROVISIONS FROM UNITED STATES CODE*

18 U.S.C. § 1623 is printed in Appendix D.

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## STATEMENT OF THE CASE

On March 7, 1984, Petitioner was indicted under 18 U.S.C. § 1623 on seven counts of perjury allegedly committed during the course of his "use" immunized testi-

mony before a federal grand jury sitting in Cleveland, Ohio, on December 2 and 3, 1981.

The District Court (which had jurisdiction under 18 U.S.C. § 3231) considered two pretrial motions to dismiss, one of which attacked the indictment on account of the self-acknowleged ineffective assistance of Petitioner's grand jury counsel. The other motion challenged the legal sufficiency of each count due to various ambiguities, imprecisions and divergences in and between the allegedly false testimony as quoted in the charges, and the allegations of the indictment's "truth paragraphs"—among other related defects.[1]

In summary rulings (Appendix B), the District Court denied the ineffective assistance motion, dismissed Counts II and V(C) as legally insufficient, but otherwise upheld the indictment. Petitioner thereafter entered a conditional plea of guilty under Fed.R.Crim.P. 11, to the remaining counts, preserving for appeal the adverse rulings on his motions to dismiss. He was later sentenced to six, concurrent one-year and one-day sentences, along with consecutive fines of $10,000 per count for a total fine of $60,000.

On appeal, Petitioner renewed his ineffective assistance claims and facial attacks on the indictment. The Sixth Circuit *reversed* the District Court's judgment *in part*, holding that Counts IV and V(D) were legally insuf-

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[1] Among its various other assigned defects, the indictment (reproduced in Appendix F) contains, within its "truth paragraphs," the novel feature of frequently inaccurate para*phrasings* of the previously quoted alleged falsehoods. As another ground of dismissal, the ineffective assistance motion asserted unfair government tactics and procedures in the grand jury appearances and in returning the indictment.

ficient and should have been dismissed, but otherwise *affirmed* the conviction. The case was ordered *remanded* to the District Court with instructions to modify its judgment and sentence consistent with the Sixth Circuit's opinion (Appendix A).

The facts pertinent to this Petition are undisputed:

Except for this case, Petitioner has never had any contact whatsoever with any aspect of the criminal justice system, as a grand jury or other witness, or defendant.

In late September of 1981, Petitioner, a Los Angeles resident, was subpoenaed to testify before the subject grand jury in Cleveland and retained a Beverly Hills attorney ("California counsel") to represent him in the matter. Early on, that counsel learned that Petitioner was not the target of the grand jury's investigation into possible income tax and related violations. Compliance with the subpoena was initially via voluntary production of various business records on October 26, 1981, followed by an informal all-day interview with IRS agents on October 27, 1981. Thereafter, following the grant of formal "use" immunity (18 U.S.C. §§ 6002-03), Petitioner testified before the grand jury on December 2 and 3, 1981. The testimony had been scheduled for one day, but at the end of the first day, the government extended the appearance to include an unexpected second day. Petitioner's California counsel, who had accompanied him on the first day, was unable to stay for the second day. When, at the conclusion of the first day's testimony, government counsel advised Petitioner and his California counsel that the testimony would continue the next day, the latter merely obtained another lawyer ("Cleveland counsel") and spent a few minutes

briefing new counsel about the matter. California counsel then returned to Los Angeles, leaving Petitioner to be represented by Cleveland counsel, a stranger to the case, to criminal representation generally, and to grand jury representation in particular.[2] Petitioner went forward with the December 3rd appearance.[3]

Petitioner's March 1984 perjury indictment followed in the wake of his grand jury counsels' uncontradicted, self-acknowledged failures to provide him with numerous standard preparatory and ongoing advice and assistance, before, during and after his December 1981 two-day appearance. Among the many undisputed unprofessional errors committed, those which *necessarily* pertain to this Petition involve the failures to inform Petitioner of, or to otherwise provide him *any* assistance regarding the critical right of recantation under the charging perjury statute, 18 U.S.C. § 1623.[4]

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[2] While no formal motion to continue was made, Cleveland counsel, on the morning of the second day, did ask government counsel to reschedule that appearance to a date when California counsel could be present, but that request was refused on the ground that Petitioner "faced no jeopardy since he had been immunized." The government also advised that contempt sanctions would be sought if he did not testify on that day.

[3] Six of the seven original perjury counts relate to that second day's testimony, including five counts which relate *solely* to that testimony (when Cleveland counsel represented Petitioner). The *only* count relating *solely* to the *first* day's appearance (Count II) was dismissed.

[4] While Petitioner contends that such *recantation*-related ineffectiveness itself requires reversal, his grand jury counsels' myriad *other* unprofessional errors are also relevant to the question presented, since those other errors made the omitted advice and assistance regarding *recantation* absolutely necessary as

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Petitioner's counsel never advised him to (and thus he did not) write down every question asked him and his answers to those questions, nor to leave the grand jury room often, let alone after every question, in order to confer with counsel about and before answering each question and to create an ongoing record of the testimony for purposes of evaluating the need to recant and, where appropriate, implementing Petitioner's statutory recantation rights.[5] Neither counsel ever debriefed Petitioner nor otherwise created a record of the questions asked and the answers given by him at either of his appearances. Neither counsel ever debriefed or asked Petitioner to review his testimony with an eye towards determining if there was any portion of it which he wanted to correct, clarify or modify. Neither counsel obtained a transcript of either the first day's testimony (so that, *e.g.*, it might be reviewed with Petitioner prior to his second day's appearance) or the second day's testimony—nor does the record reflect any attempt to obtain such transcripts.

At no time did either counsel advise Petitioner of the existence of his statutory right to recantation, nor of anything pertaining to that right, nor did the government, the grand jury foreperson, or the trial court which immunized and ordered his testimony, so advise Petitioner. It was

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curative measures. For example, by their own admission, counsel had no idea of the testimony as it developed and never monitored it as to its precision, clarity, etc. They never instructed Petitioner to request his interrogators to simplify or otherwise clarify any complex, ambiguous or otherwise imprecise or confusing questions, and that failing to receive such clarification he should refuse to answer.

[5] In fact, during the entire course of his two days of testimony, Petitioner left the grand jury room *only* 6 times.

only years later, after his indictment, that Petitioner first obtained and read a copy of his grand jury transcript and became aware that there was a statutory mechanism (i.e., recantation) by which he could have corrected any errors in his testimony, thereby totally preventing a perjury prosecution under 18 U.S.C. § 1623—the statute he was indicted for allegedly violating.

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## REASONS FOR GRANTING THE WRIT

### I

### IN TOTALLY FAILING TO ADDRESS THE UNDISPUTED FAILURES OF PETITIONER'S GRAND JURY COUNSEL TO INFORM HIM OF, OR TO OTHERWISE PROVIDE HIM EFFECTIVE ASSISTANCE REGARDING THE CRITICAL RIGHT OF RECANTATION UNDER THE CHARGING PERJURY STATUTE, 18 U.S.C. § 1623, THE SIXTH CIRCUIT'S DECISION IGNORED A QUESTION OF EXCEPTIONAL IMPORTANCE WHICH REQUIRES RESOLUTION BY THIS COURT.

In his appeal, Petitioner asserted, *inter alia,* that his grand jury counsels' undisputed failures to comply with numerous universal federal grand jury witness representational practices before, during and after his appearance, require dismissal of his indictment, not only under the Sixth Amendment and Due Process Clause of the Fifth Amendment, but also as dictated by fundamental supervisory fairness.

While acknowledging the right of such witnesses to consult with and be assisted by counsel *outside* the grand

jury room, the Sixth Circuit's opinion (the "opinion") (App. 4-7) disposed of and rejected those ineffective assistance claims solely with reference to the issue of whether such witnesses have a Sixth Amendment right to counsel and, if so, whether that right affords protection against the commission of perjury. However, the opinion's treatment of that issue misses a much narrower question of exceptional importance which the Court ignored concerning the main thrust of Petitioner's ineffective assistance claims: his grand jury counsels' failures regarding the critical right and defense of recantation under subsection (d) of the charging statute, 18 U.S.C. § 1623 (reprinted in Appendix D).

The opinion's treatment of that Sixth Amendment issue concluded (App. 6) that "[e]ven if [Petitioner] had a Sixth Amendment right to counsel . . . [that] right provides [no] protection for the commission of perjury. 'Our system provides methods for challenging the government's right to ask questions—lying is not one of them. A citizen . . . cannot with impunity knowingly and deliberately answer with a falsehood.' *Bryson v. United States*, 396 U.S. 64, 72 (1969)." However, the opinion thus totally missed Petitioner's point that, with the enactment of 18 U.S.C. § 1623 in 1970, our statutory system *does* provide even knowing and deliberate perjurers with such a right and is designed to encourage them to recant their falsehoods with total impunity under the very statute[6] that

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[6] Ironically, in one of the cases cited by the opinion, *United States v. Brown*, 666 F.2d 1196, n.2 at 1199 (8th Cir. 1981), *cert. den.*, 457 U.S. 1108 (1982), the defendant witness was indicted

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Petitioner was indicted for allegedly violating and of which he stands convicted. The record is uncontradicted that Petitioner was never advised and remained unaware of that statutory recantation right until his present counsel discussed it with him *after* his indictment. By then, of course, it was too late. Ironically, given the unusual twenty-eight month period between testimony and indictment, the period in which recantation could have usefully been effected was substantially longer than the norm.

The opinion totally failed to address the undisputed failures of grand jury counsel both to advise Petitioner of his statutory recantation right, and to take any steps to evaluate or implement that right according to universally accepted standards of federal grand jury witness representation, including such practices as preparation of counsel's own record of testimony, seeking a transcript, and

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for perjury under § 1623 only *after* a public defender was appointed precisely for purposes of representing him when he was later recalled to the grand jury and given the opportunity to *recant* his prior testimony.

Moreover, relief from ineffective assistance does not even depend upon "actual innocence," *Kimmelman v. Morrison*, 477 U.S. 365, 106 S.Ct. 2574, 2586 (1986), *United States v. Bowers*, 517 F.Supp. 666, 670 (W.D.Pa. 1981) [charges dismissed for counsel's *pre*-indictment ineffectiveness]. Effective assistance is due both the "innocent and guilty alike," *Kimmelman, Id.*— even those "who may later be accused of perjury," *Whiteside v. Scurr*, 750 F.2d 713, 714, *den'g. reh'g. en banc* in 744 F.2d 1323 (8th Cir. 1984), *rev'd.* on other grounds, *sub. nom., Nix v. Whiteside*, 475 U.S. 157 (1986). "Even guilty individuals are entitled to be advised of strategies for their defense." *United States v. Levy*, 577 F.2d 200, 209 (3rd Cir. 1978).

witness debriefing.[7] Proper representation of Petitioner, according to those omitted practices, would have assured that any errors, inaccuracies, inconsistencies, misstatements, or falsehoods in his testimony would have been identified, evaluated, corrected and, where appropriate, *recanted.*

The right of recantation was thereby "irretrievably lost" to Petitioner; he was thereby deprived of the very method statutorily created by Congress as a critical part of the investigative process, to be utilized by those in Petitioner's shoes in order to spur the fact-finding process by permitting them to avoid prosecution for the offense. *Hamilton v. Alabama*, 368 U.S. 52, 54 (1961).

This Court is respectfully urged to grant *certiorari* with respect to the issue of whether such *recantation*-related ineffective assistance (especially in the face of the failures of the government, grand jury foreperson and immunizing court to inform the witness of his statutory recantation right) requires dismissal of the subject indictment on any or all of the following bases:

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[7] Counsel's own cumulative record must be made, based upon consultations during the testimony, the witness' memory and/or notes taken while in the grand jury room. Counsel should move for a transcript prior to and at the conclusion of testimony, as a further (and more accurate) check against any errors and to avoid conflicting testimony, and to make effective use of the recantation right. The witness must also be vigorously debriefed so as to review and evaluate with him the questions and answers, what the questions meant to him, and to determine whether the responses were reasonable, and to identify any areas in need of clarification or correction.

(1) *Constitutional Bases*: Either a *limited* Sixth Amendment[8] or Fifth Amendment due process right to effective assistance regarding recantation (at the very least with respect to notice of recantation), or a general

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[8] The following should be emphasized with respect to the opinion's treatment (App. 4-6) of the broader issue of a grand jury witness' *Sixth* Amendment right to counsel *in general: Kirby v. Illinois,* 406 U.S. 682 (1972), did not consider *any* issues regarding the rights of such witnesses and was also merely a *plurality* opinion. In fact, as Justice Brennan himself pointed out in his concurrence in *United States v. Mandujano,* 425 U.S. 564, 603 (1976), *no* case in this Court "has squarely presented the question."

Contrary to the Sixth Circuit's related suggestion, in strenuously contending that such witnesses are constitutionally entitled to some degree of assistance, that concurrence, while focusing a great deal on the need to protect such witnesses' Fifth Amendment privilege, was careful to emphasize that it did *not* purport to define the exact dimensions of their constitutional rights to counsel—especially since the issue was not before the Court. *Id.* at 607-608. Indeed, many of the cases cited by Justice Brennan (*Id.* n. 23 and text at 606), as illustrating the rights to counsel's assistance outside the grand jury room, involved *immunized* witnesses (including a case chiefly relied upon by the Sixth Circuit's opinion, *United States v. George,* 444 F.2d 310, 314 (6th Cir. 1971) [*transactional* immunity]), thereby belying the Sixth Circuit's further suggestion that immunized witnesses have an attenuated need for protection under the Sixth Amendment. Of course, with respect to the critical matter of *recantation,* immunized witnesses have certainly the same, and often much more need for counsel's assistance than do *non*-immunized witnesses.

Finally, the *dicta* at the page in the *Mandujano plurality* opinion, 425 U.S. 581, to which the Sixth Circuit cites as suggesting that there is no such Sixth Amendment right whatsoever, has been interpreted as reflecting only the law that counsel may not be present *inside,* Note, *Recent Developments in the Law of the Federal Grand Jury,* 1977 Utah L.Rev. 170, n. 259 and text at 210, and thus, as the source of witnesses' rights to counsel *and* effective assistance *outside* the grand jury room. *In re Grand Jury Subpoena (Samuelson),* 739 F.2d 1354, 1357-59 (8th Cir. 1984) [citing *Mandujano and Strickland v. Washington,* 466 U.S. 668 (1984)]. Indeed, the Sixth Circuit also cites to the same passage in *Mandujano* for what that court acknowledges is the right to counsel's assistance outside the grand jury room.

due process right[9] to effective assistance of grand jury counsel, as premised upon what the opinion acknowledges is the right to counsel's assistance outside the grand jury room; and

(2) *Supervisory Power Bases:* The dictates of supervisory fairness, or as the result of supervisory enforcement of the statutory recantation right and the overriding congressional intent and purpose behind it according to a simple narrow supervisory rule which Petitioner has proposed throughout this case, as follows.

The purpose of § 1623(d)'s recantation provisions is to discover the truth by eliminating the witness' liability. *See* 2 U.S. Cong. Code & Admin. News pp. 4023-24 (1970); *In re Craven* (N.D.Cal. 1973), 13 Crim. L.Rep. 2100 (BNA, May 2, 1973) (unpublished decision reprinted in Appendix E).[10] In short, Congress wanted the truth even if it meant letting a perjurer "off the hook." *See also United States v. Clavey*, 565 F.2d 111, 124 (7th Cir. 1977) (Swygert, J. dissenting), *aff'd. by an equally divided court on reh'g. en banc*, 578 F.2d 1219 (7th Cir. 1978), *cert den.*, 439 U.S.

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[9] The opinion ignored Petitioner's separate contention that, distinct from the Sixth Amendment, due process itself affords a right to effectiveness of counsel in grand jury proceedings in light of decisions such as *Evitts v. Lucy*, 469 U.S. 387 (1985), *United States v. Alvarez*, 580 F.2d 1251, n. 5 and text at 1256 (5th Cir. 1978) and *United States v. Bowers, supra*. The opinion limited its very different summary due process inquiry to whether dismissal was required due to unfair government tactics and procedures (App. 6).

[10] *In re Craven, supra*, held that, in and of themselves, the recantation provisions of § 1623 provide sufficient reason for a witness to prospectively secure a transcript of any testimony he might give before the grand jury, in light of "Congress' intent that the Grand Jury should be more concerned with getting at the truth than with obtaining perjury convictions."

954 (1978).[11] That congressional purpose of § 1623(d) can be vindicated, and all of the competing rights and interests of the government, the witness and the criminal justice (including the grand jury) system fully and easily accommodated, only by requiring that not later than the conclusion of an appearance, the government or grand jury foreperson give the witness written notice of the recantation provision. Alternatively, such notice could be printed on the grand jury subpoena itself.[12]

The recantation right is *absolutely* meaningless and the congressional purpose behind it *totally* frustrated unless witnesses are *specifically* advised of it. The burden on the government under the proposed supervisory rule is *non-existent* weighed against the critical, congressionally mandated need for such a practice and the enormous benefits to the entire testimonial system. If only on that basis, and even apart from fundamental fairness and other, constitutional considerations[13] it is submitted that such con-

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[11] "[That] congressional purpose is frustrated if witnesses are not able to obtain the assistance of counsel in determining whether to exercise [their recantation rights]. . . . Without knowing what his client has said, defense counsel is in no position to give legal advice or even determine whether there was anything to recant." *United States v. Clavey, Id.*

[12] *Cf. United States v. Brown, supra,* 666 F.2d at 1198 and *United States v Daniels,* 461 F.2d 1076, 1077 (5th Cir. 1972) *(per curiam),* wherein prior to testifying, each witness was given written advice of the right to consult with counsel.

[13] With respect to those considerations, however, there exists on the uncontradicted record in this case the requisite "reasonable probability . . . sufficient to undermine confidence in the outcome," that "but for counsel[s'] unprofessional errors, the result of the proceeding would have been different," *Strickland,*

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gressionally mandated policies require this Court's review and reversal in this case.[14]

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*supra*, 466 U.S. at 694; *Kimmelman, supra*, 106 S.Ct. at 2583; *Whiteside, supra*, 106 S.Ct. at 999—*i.e.*, Petitioner would *not* have been indicted—*even apart* from counsels' numerous *other* unprofessional errors which made their omitted advice and assistance concerning *recantation* absolutely necessary as curative measures.

And given how that *reasonable probability/but-for* Sixth Amendment standard is grounded in considerations of *fundamental fairness* as "the ultimate focus of inquiry," *Strickland, supra*, 466 U.S. at 696-98, the manifest satisfaction of that standard, in this case, *a fortiori* establishes due process and supervisory fundamental *un*fairness sufficient to compel dismissal of the indictment.

[14] *Cf. Nix v. Whiteside, supra*, 106 S.Ct. at 993-999 [treatment of client's *proposed* perjury, which persuaded him to testify *truthfully* at his criminal trial, *held* to constitute effective assistance, especially in light of our justice system's overriding dedication to "a search for the truth"].

## II

**IN HOLDING THAT SOME BUT NOT ALL OF THE COUNTS SHOULD HAVE BEEN DISMISSED DUE TO VARIOUS IMPRECISIONS AND DIVERGENCES IN AND BETWEEN THE QUOTED ALLEGEDLY FALSE TESTIMONY AND THE ALLEGATIONS OF THE INDICTMENT'S "TRUTH PARAGRAPHS," THE SIXTH CIRCUIT'S DECISION IS IN CONFLICT WITH THE LIMITATIONS ON FEDERAL PERJURY PROSECUTIONS ARTICULATED BY THIS COURT IN BRONSTON V. UNITED STATES, 409 U.S. 352 (1973), AS WELL AS THE RULES FASHIONED BY OTHER CIRCUITS, ESPECIALLY THOSE DEVELOPED IN LIGHT OF BRONSTON, FOR EVALUATING AND DETERMINING THE LEGAL SUFFICIENCY OF PERJURY CHARGES. IN SO HOLDING, THE SIXTH CIRCUIT HAS ALSO SO FAR DEPARTED FROM ITS OWN APPLICABLE DECISIONS, AS TO CALL FOR THE EXERCISE OF THIS COURT'S SUPERVISORY POWERS TO CORRECT THE MISCARRIAGE OF JUSTICE WHICH PETITIONER HAS THEREBY SUFFERED. MOREOVER, THE CONFLICTING AND CONFUSING STATE OF THE LAW OF PERJURY IN THE VARIOUS CIRCUITS IN ALL THESE RESPECTS, AS IT HAS EVOLVED SINCE BRONSTON, DEMONSTRATES A CRITICAL NEED FOR THIS COURT TO CLARIFY THAT LAW AND UNIFY IT.**

In response to Petitioner's facial attacks on his seven count perjury indictment (reprinted in Appendix F), the district court dismissed Counts II and V(C). The Sixth Circuit held that Counts IV and V(D) should have also been dismissed, but otherwise affirmed the conviction. It

is respectfully submitted that Petitioner's facial challenges should have resulted in a total reversal of his conviction under *Bronston v. United States,* 409 U.S. 352 (1973), the Sixth Circuit's own decisions, and parallel decisions of other circuits.[15] The Sixth Circuit's opinion referenced *Bronston, Eddy* and *Wall,* but ignored the many parallel decisions of other circuits which Petitioner urged on appeal, including cases on which the Sixth Circuit's opinion in *Eddy* was grounded.

The opinion below (the "opinion") is internally inconsistent because its holdings of reversal *versus* affirmance simply can*not* be reconciled as a matter of what in most instances is an *un*articulated conclusory *result*[16], and, where the Sixth Circuit's partially expressed uncertain reasoning *can* be gleaned, the same reasoning as applied by the Court to reverse some counts, should have compelled reversal of those left undisturbed.[17]

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[15] Although *Bronston* dealt with a conviction under 18 U.S.C. § 1621, the general perjury statute, it has been universally applied to the perjury statute involved here, 18 U.S.C. § 1623. *See, e.g., United States v. Eddy,* 737 F.2d 564 (6th Cir. 1984); *United States v. Tonelli,* 577 F.2d 194 (3rd Cir. 1978); *Cf. United States v. Wall,* 371 F.2d 398 (6th Cir. 1967), on which *Bronston* itself heavily relied in articulating various strictures against imprecise testimony and "perjury by implication" as predicates for perjury, 409 U.S. at 360-61.

[16] *E.g.,* as to Counts I, III & VI, the Sixth Circuit (App. 8) held, without elaboration, that it was "of the opinion that [said counts] did not charge defendant with perjury by implication but, instead, were sufficient, as a matter of law, to support a conviction." Similarly, the Court (App. 12) simply held, without elaboration, that "[p]arts (A) and (B) [of Count V] were sufficient to support a conviction."

[17] *E.g.,* by parity of the Court's own reasoning, and also solely by virtue of the result, with respect to the *reversal* of the con-

(Continued on following page)

Moreover, the opinion, by the very nature of its internal inconsistency, is utterly contrary to this Court's teachings in *Bronston, supra,* and the Sixth Circuit's opinions in both *Eddy* [which heavily relied on *United States v. Tonelli,* 577 F.2d 194 (3rd Cir. 1978)] and *Wall, supra,* with respect to the facial legal sufficiency of perjury indictments. This is particularly critical here given the indictment's puzzling use of frequently erroneous paraphrasings of the otherwise quoted testimony, in its "truth paragraphs." *See* n.20, *infra.*

Putting aside the foregoing conflicts, the opinion unsettles its *own* circuit's law because it incompletely and/or incorrectly articulates and applies the *Eddy* (in light of *Tonelli*) and *Wall* criteria. Petitioner has surely been denied the equal protection of that court's wise decisions, which if thoroughly and consistently applied to him would have resulted in complete reversal. In so far departing from its own applicable decisions and from the accepted and usual course of judicial procedures, the Sixth Circuit's opinion calls for this Court's supervisory review to correct what amounts to a miscarriage of justice.

An analysis of Count III (App. 32-34), which the Sixth Circuit approved without *any* elaboration, will illustrate those gross conflicts. The allegedly false testimony is first set forth, *verbatim*:

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viction under sub-part *D of Count V* (App. 12), the *other* counts which were also equally or even more flawed by woeful imprecisions in the questions, answers and truth paragraphs regarding the recurring subject matter of Petitioner's so-called "Swiss account(s)" (*i.e.*, Counts V(A), (B), (E) & VII, should have also fallen. Among other defects those counts also omitted key qualifying testimony. *See Tonelli, supra,* at 577 F.2d 198, 200.

Q. Mr. Braverman, referring to our conversation yesterday concerning the bank account Fabricora Establishment—

A. Correct.

Q. —do you recall that we discussed that yesterday?

A. [Yes].

Q. Can you tell the Grand Jury why it was that $40,000 was removed from that account and transferred to the United States for the downpayment on Reuben Sturman's son's house?

A. Can I tell you anything about it?

Q. Yes.

A. Absolutely not.

Q. Do you have any knowledge that that, in fact, was done?

A. No—excuse me. I have knowledge that a house was purchased. I have knowledge that David Sturman bought a house, yes.

Q. What you are indicating is that you had no independent knowledge of where the downpayment for that home came from; is that correct?

A. That's correct.

The *truth paragraph* (which only *paraphrases* that alleged false testimony) follows:

> "Contrary to the Defendant's testimony that he had no independent knowledge of the source of the $40,000 downpayment for David Sturman's house he had personal knowledge of the transfer of $40,000 from the Fabricora Establishment account to an escrow account for David Sturman in Cleveland, Ohio."

While that paragraph alleges, as the objective truth, that Petitioner had "knowledge of the transfer of $40,000 from the Fabricora . . . account *to an escrow account for David Sturman in Cleveland, Ohio,*" in fact there were

absolutely *no* questions or answers that made any reference to any "escrow account." Thus, Count III is fatally defective since its truth allegations fail to track the literal testimony [a failure implicitly underlying the Sixth Circuit's reversal of Count IV (App. 8-9).] *See United States v. Tonelli, supra,* 577 F.2d at 199-200; *United States v. Finucan,* 708 F.2d 838, 847 (1st Cir. 1983).[18] Count III's allegations impermissibly charge Petitioner with perjury based on the theory that the questions and answers actually asked and given, *by implication must be assumed* to include and refer to the "escrow account."[19]

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[18] The Third and First Circuits' holdings that, for a perjury charge to be sustained, the "truth paragraph" must track the allegedly false testimony, were specifically fashioned to comply with this Court's decision in *Bronston, supra. See also United States v. Eddy, supra,* at 737 F.2d 569: "[I]f the prosecutor never asks the critical question and never presses for an unequivocal answer the defendant may not be convicted of false swearing." [Quoting from *United States v. Slawik,* 548 F.2d 75, 84 (3rd Cir. 1977) wherein the Third Circuit characterized that rule as a "holding of *Bronston*".]

[19] *See United States v. Eddy, supra,* 737 F.2d at 569: "An 'intent to mislead' or 'perjury by implication' is insufficient to support a perjury conviction. [Citing *Bronston*]. . . . 'The burden is on the questioner to pin the witness down to the specific object of the questioner's inquiry.' [Citing *Bronston*]." *See Eddy* also at 567: "As the Third Circuit has noted, in perjury cases, '[n]o guessing is tolerated [in the drafting of a perjury indictment]' [citing *United States v. Tonelli, supra,* 577 F.2d at 195]"; and again at 571: " 'A charge of perjury, however, is not a substitute for careful questioning on the part of a prosecutor,' [Citing *Tonelli,* 577 F.2d at 198]. In a perjury case, the defendant 'may not be assumed into the penitentiary.' [Citation omitted]." In light of its myriad imprecisions, "[a]ny reading of the charges found in Count [III] of the indictment leads one to believe that it has failed to set forth with sufficient clarity the precise falsehood alleged, the factual basis of that falsehood and the objective truth in 'stark contrast so that the claim of falsity is clear to all who read the charge.' " *Eddy, supra,* at 571 [citing *Tonelli, supra,* at 195].

Furthermore, the prosecutor's initial puzzling query (to which Petitioner responded in the negative): "[whether he could] tell *why it was* that $40,000 was removed from that [Fabricora] account and transferred to the U.S. for the downpayment on [the] house," also undermines the legal sufficiency of the very different alleged falsehood which is paraphrased in Count III's truth paragraph: i.e., that Petitioner falsely denied knowledge "of the source" but in fact knew "of the transfer" of the funds "to an escrow account."[20]

That initial testimony provided further context for the prosecutor's *next*, impossibly ambiguous question: "Do you have any knowledge *that that*, in fact, was done?" Thus, the word "that" could have referred either to: (1) the removal of the funds from the Fabricora account; or (2) their transfer to the U.S.; or (3) the application of the funds to the purchase of the house; or (4) to Sturman's son's purchase of the house. (Equally important the word "that" could *not* refer to the key event: the transfer of

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[20] Unlike the more typical perjury indictments involved in cases like *Tonelli, supra,* which merely set forth the alleged false testimony *verbatim* and then allege the contrasting truth in the so-called "truth paragraph," most of the counts in Petitioner's indictment contain a *paraphrasing* of the alleged false testimony within each truth paragraph which is plainly at odds with the actual testimony and which, long after the fact, unfairly implies a precision originally lacking in the questions, answers and truth allegations. The Sixth Circuit's opinion, however, wholly ignores that source of fatal imprecision and instead accepts each *mis*paraphrasing of falsehood as accurate. However, those misparaphrasings further reinforce the indictment's fatal "fail[ure] to set forth with sufficient clarity the precise falsehood alleged," *Eddy, supra,* 737 F.2d at 564 (citing *Tonelli,* 577 F.2d at 195). "The most that can be said for [such] recharacterization . . . is that it reveals what the prosecutor's question[s] should have been." *United States v. Saintz,* 772 F.2d 559, 562 (9th Cir. 1985); *United States v. Slawik, supra,* 548 F.2d at 85-86.

the funds to the *"escrow account"* which was never once referred to in *any* testimony.) *See United States v. Slawik, supra,* 548 F.2d at 85 and *United States v. Lighte,* 782 F.2d 367, 376-77 (2nd Cir. 1986) [wherein the courts condemned such puzzling usage of the word "that"]. *See also, Eddy's* condemnation of a similar multiple imprecise question, 737 F.2d at 571. Moreover, Petitioner's response demonstrated that he interpreted the very ambiguous word "that" to refer to the purchase of the house. Further, the gross imprecision of *that* question compounded the ambiguity of the very *next* query which was itself fatally imprecise: *i.e., "where* the downpayment . . . came *from"* could have referred to what specific bank account those funds came from, or, instead, to the ultimate prior source(s) of the funds, *e.g.* a person, a company, a personal loan, a gift, etc. "Vague and ambiguous questions are not acceptable." *United States v. Eddy, supra,* 737 F.2d at 567 (and cases there cited including *Wall, Bronston, Finucan* and *Tonelli*).[21] That imprecision is also crit-

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[21] *See United States v. Wall, supra,* 371 F.2d at 399-400 (6th Cir. 1967) [where "question upon which . . . perjury charge [is] based, was inarticulately phrased and . . . susceptible of two different interpretations . . . no charge of perjury can be based upon an answer to such a question."] As noted in *Eddy, loc. cit., Wall* was cited with approval in *Bronston,* 409 U.S. at 360 [for *Bronston's* rule that "[t]he burden is on the questioner to pin the witness down to the specific object of . . . inquiry."] *See also United States v. Finucan, supra,* 708 F.2d at 846-48 and *Tonelli, supra,* 577 F.2d at 200. And *see United States v. Cook,* 497 F.2d 753, 764-765 (9th Cir. 1972) [as explained and quoted from by *Eddy,* 737 F.2d n. 1 and text at 567, 571]: "[Im]proper to indict and prosecute. . . for perjury where the questions forming the basis of the charge are so vaguely and inarticulate-

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ical since Count III's *truth* paragraph inconsistently alleges Petitioner's testimony to have been false because in fact he knew of the transfer of funds "*to* an *escrow account.*" Those truth allegations, like the literal testimony, are also plainly at odds with Count III's ambiguous *paraphrase* of the alleged falsehood as regarding knowledge of the "source" of the funds. The truth paragraph also neither alleges that Petitioner knew that such transfer was for the house purchase, nor that he knew such funds were so applied.

When *all* its numerous imprecisions are taken as a whole, Count III patently runs afoul of the Third and Ninth Circuits' *Bronston*-based requirement (which the Sixth Circuit adopted in *Eddy, supra*, 737 F.2d at 567, 571) that "the indictment must set out the allegedly perjurious statements and the objective truth in stark contrast so that the claim of falsity is clear to all who read the charge."[22]

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ly phrased *by the interrogator* as to require the jury to probe the inner workings of the accused's mind to seek to ascertain which of several plausible meanings he attributed to the ambiguous inquiries when he gave the allegedly perjurious responses." *See also, United States v. Saintz, supra,* 772 F.2d at 564: "A witness cannot be forced to guess at the meaning of the question to which he must respond under penalty of perjury."

[22] *United States v. Tonelli, supra,* 577 F.2d at 195 (3rd Cir.) [prefacing the quoted rule with the stricture that "[n]o guessing is tolerated" in the drafting of perjury indictments]; *United States v. Ryan,* 828 F.2d 1010, 1017 (3rd Cir. 1987) [citing to the page in the *Tonelli* opinion, 577 F.2d 195, at which the quoted rule is the *only* legal principle stated]; *United States v. Cowley,* 720 F.2d 1037, 1042-1044 (9th Cir. 1983), *cert. den.*, 465 U.S. 1029 (1984) and *United States v. Schulman,* 817 F.2d 1355, 1358 1360-1361 (9th Cir. 1987).

The Ninth Circuit's recent affirmance of the dismissal of strikingly similar perjury charges for failure to meet that "stark contrast" rule, *United States v. Schulman, supra,* 817 F.2d at 1360-1361, is virtually on all fours with that same issue here with respect to the instant Count III:

> "Count XXIII charged that Schulman lied when he denied he knew what Parallax did with the money received from the partnerships and when he said he had no first-hand knowledge concerning Parallax's depositing of the money because Schulman himself deposited the checks into the Parallax account. The government . . . asked . . . if he knew whether Parallax deposited the money from the partnerships. Schulman said he did not know. The government says that in truth Schulman acted for Parallax by initialing and depositing the deposit tickets and checks into the Parallax account . . . [and that] this contrast between the answer and the truth is sufficient for a charge of perjury. We agree . . . that there is no stark contrast between the statements because the government attorney did not ask questions specific enough to pin down precisely what Schulman's role had been. *Bronston,* 409 U.S. at 360, 93 S.Ct. at 600."[23]

In light of *all* its myriad imprecisions, Count III also violates the Third Circuit's standards which were specifi-

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[23] In upholding the dismissal of another perjury count under that same rule, the Ninth Circuit, at 817 F.2d 1360, reasoned: "What Schulman may have meant is unclear when viewed in context . . . . It was incumbent on the government attorney 'to bring the witness back to the mark, to flush out the whole truth with the tools of adversary examination.' *Bronston* . . . . Here the attorney failed 'to pin the witness down to the specific object of the questioner's inquiry.' . . . . Because the meaning of Schulman's answer is ambiguous we agree . . . that the truth paragraph did not stand out in stark contrast to the allegedly perjurious statement."

cally derived from *Bronston* and recently reaffirmed in *United States v. Ryan, supra,* 828 F.2d at 1017 (also adopted by the Sixth Circuit in *Eddy, supra,* 577 F.2d at 570-71):

> "Further, the indictment does not clearly set forth the grand jury's understanding of the question, and as we stated in *Slawik,* 'a [false statements] conviction . . . may not stand *where the indictment fails to set forth the precise falsehood alleged and the factual basis of its falsity with sufficient clarity* to permit a jury to determine its verity and to allow meaningful judicial review of the materiality of those falsehoods.' *Slawik,* 548 F.2d at 83; *see Tonelli,* 577 F.2d at 195." *United States v. Ryan, loc. cit* (emphasis added).[24]

Accordingly, *certiorari* is required to review the facial legal sufficiency of the surviving counts of the indictment herein because the Sixth Circuit's decision utterly conflicts with its own decisions, the decisions of other (principally the Third and Ninth) circuits, and this Court's decision in *Bronston v. United States, supra.*

*Certiorari* should also be granted on that issue because the law in this area as it has developed in the various circuits, after *Bronston,* is itself so confusing, vague, imprecise and frequently conflicting, that few called upon to interpret and enforce it may do so with any degree of

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[24] In *Slawik,* 548 F.2d at 83-84, *and Tonelli,* 577 F.2d at 196, 200, the Third Circuit first articulated the above-quoted rule which it specifically derived from *Bronston,* in holding that perjury charges were legally insufficient and should have been dismissed: "[T]o hold otherwise would permit the trial jury to inject its inferences into the grand jury's indictment, and would allow defendants to be convicted for immaterial falsehoods or for 'intent to mislead' or 'perjury by implication'—which *Bronston* specifically prohibited."

certainty. This state of the law has led to near intolerable abuses, such that perjury prosecutions for identical conduct will often generate conflicting or irrational results depending on the circuit or the reviewing panel within an individual circuit. There is thus a critical need for this Court to clarify that law and unify it with respect to the following overlapping problem areas in the federal law of perjury:[25]

**1. Requirements of Precision And Clarity In the Allegations of Falsehood (Including the Effect of Imprecision In Question and Answer):**

The following circuit court decisions have stringently applied *Bronston's* "precise questioning imperative" and related strictures in essentially concluding that perjury charges must fall where the question could have been interpreted in more than one way, or the meaning of the answer is left ambiguous due to imprecise questioning, or where the indictment otherwise fails to set forth the precise falsehood alleged with sufficient clarity: The Third Circuit's decisions in *United States v. Tonelli, supra, United States v. Slawik, supra;* and *see United States v. Helstoski,* 635 F.2d 200, 203, 206 (3rd Cir. 1980); the Sixth

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[25] In grappling with those problems, the district courts have also been powerfully influenced by *Bronston. See, e.g., United States v. Lovecchio,* 561 F.Supp. 221, 234 (M.D.Pa. 1983), where, in express reliance on *Bronston's* "precise questioning imperative" and related strictures, as well as the Third Circuit's "no guessing is tolerated" and "stark contrast" principles, the court ruled that "an indictment under . . . § 1623, . . . cannot be based on questions that are ambiguous or otherwise unclear and the equally uncertain answers thereto. Such an indictment would violate the standard . . . that '[e]specially in perjury cases, defendants may not be assumed into the penitentiary' [citation omitted]."

Circuit's decisions in *United States v. Eddy, supra, and, pre-Bronston, United States v. Wall, supra;* the Ninth Circuit's decisions in *United States v. Cook, supra; United States v. Cowley, supra;* and *United States v. Schulman. See,* again, the First Circuit's decision in *United States v. Finucan, supra.* And to the same or similar effects, *see United States v. Larranga,* 787 F.2d 489, 497 (10th Cir. 1986); *United States v. Vesaas,* 586 F.2d 101 (8th Cir. 1981); and *United States v. Brumley,* 560 F.2d 1268, 1275-1277 (5th Cir. 1977) ["this attempted foundation for a perjury prosecution fails for lack of specificity, for lack of the critical question, and for lack of the unequivocal answer."][26]

*Compare,* with the foregoing cases, the following decisions evincing contrary, often far more subjective approaches which typically apply *Bronston* restrictively and tend to narrowly look to the question or answer in isolation and to the exclusion of all other factors or sources of imprecision: *United States v. Lighte,* 782 F.2d 367 (2d Cir. 1986) [*Cf. United States v. Bell,* 623 F.2d 1132 (5th Cir. 1980)]; *United States v. Caucci,* 635 F.2d 441 (5th Cir. 1981); *United States v. Haimowitz,* 725 F.2d 1561 (11th Cir. 1984); *United States v. Beitling,* 545 F.2d 1106 (8th Cir. 1976); *United States v. Kehoe,* 562 F.2d 65 (1st Cir. 1977); *United States v. Morales,* 815 F.2d 725 (1st Cir. 1987); *United States v. Petzold,* 788 F.2d 1478 (11th Cir. 1986); *United States v. Chapin,* 515 F.2d 1274 (D.C.

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[26] In so holding, *Brumley* concluded its analysis by articulating the principle that "[e]specially in perjury cases, defendants may not be assumed into the penitentiary." *Brumley* derived that principle from *Bronston's* "precise questioning imperative" and the corollary burden on the questioner "to pin the witness down."

Cir. 1975); *United States v. Sampol*, 636 F.2d 621 (D.C. Cir. 1980).

As may be true of the Sixth Circuit's opinion in this case and its flagrant disregard of that Court's own wise decisions, the decision in *United States v. Lighte, supra*, a case relied on by the government on Petitioner's appeal, shows how very unclear, uncertain, and uncomfortable the Second Circuit is with its confusing law in these areas, and that it, like other circuits, is groping for approaches and desperately in need of guidance from this Court. In *Lighte*, after first candidly admitting that its "fundamentally ambiguous" test "has itself proven to be fundamentally ambiguous," *Id.* 782 F.2d at 375, the Court proceeded to strike down two perjury counts for ambiguity in the underlying questions. *Id.* at 375-376. The Court then analyzed "another series of questions that, while perhaps not fundamentally ambiguous were at least most inartfully phrased." After characterizing those questions as "puzzling" and "completely amorphous," the Court concluded that "more focused questions should have been asked." *Id.* at 376. But rather than invalidating the charges premised on those questions, the Court held that at retrial on those and other counts, "it would appear that in the exercise of his discretion the prosecutor should withdraw reliance on those questions." *Id.* at 377.[27]

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[27] Compounding that confusion, in *United States v. Ryan, supra*, 828 F.2d at 1015-1017, while otherwise reaffirming the requirements of specificity, clarity and precision imposed by *Tonelli* and *Slawik*, the Third Circuit also suggested that the Second Circuit's fundamentally ambiguous "fundamental ambiguity" test should also govern the effect of imprecise questioning in all types of perjury or false statement prosecutions. And see *United States v. Qaoud*, 777 F.2d 1105, 1114 (6th Cir. 1985).

**2. Requirements of Allegation, Precision and Clarity Regarding the Objective Truth:**

The Third Circuit's requirement that perjury charges allege the objective truth, within a so-called truth paragraph which must "set forth the precise . . . factual basis of . . . falsity with sufficient clarity," *United States v. Slawik, supra, United States v. Tonelli, supra, United States v. Helstoski,* 635 F.2d 200, 203, 206 (3rd Cir. 1980), *United States v. Ryan, supra,* has been followed by the Sixth Circuit in *United States v. Eddy, supra.*

Although in *United States v. Brumley, supra,* the Fifth Circuit followed that rule, the theory that a truth paragraph must be included has been rejected, in *United States v. Oberski,* 734 F.2d 1034, 1035 n.1 (5th Cir. 1984), and by the Second and Seventh Circuits in *United States v. Marchisio,* 344 F.2d 653, 662 (2nd Cir. 1965) and *United States v. Serola,* 767 F.2d 364, 369-70 (7th Cir. 1985), at least where the perjury indictment "contains clear, direct, unambiguous and precise questions and answers" as in *Serola, Id.* Moreover, those circuits have not only left open the possibility that truth allegations may be required in some as yet undefined circumstances, but they have also failed to address the question of what precision and clarity should be required of a truth paragraph should the government *choose* to include it, as in *this* case. Adding a further wrinkle to this confusion and conflict, although the Ninth Circuit is similarly unclear as to when a truth paragraph may be required, *see, e.g., United States v. DeCoito,* 764 F.2d 690, 693 (9th Cir. 1985) ["Cases may arise in which, without an allegation of truth, the indictment will not be sufficient"], it *has* approached the prob-

lem of precision and clarity in truth allegations by adopting the Third Circuit's "stark contrast" requirement, as noted *infra*.

**3. Relationships Between (Including the Effect of Imprecision in) the Allegations of Truth and Falsity:**

The Third Circuit's rule that perjury charges must set out in "stark contrast" the allegedly false statements and the objective truth, as established by *Tonelli, supra,* and reaffirmed in *Ryan, supra,* 828 F.2d at 1017 (3rd Cir. 1987), and *Helstoski, supra,* 635 F.2d at 203, 206 (3rd Cir. 1980), has been followed by the Sixth and Ninth Circuits, in *Eddy, supra, United States v. Schulman, supra,* and *United States v. Cowley, supra,* but has apparently not been adopted or even cited by any other circuits. While as previously mentioned, the Ninth Circuit decisions are unclear as to when truth allegations must be included in the first instance, they are equally *clear* that when a perjury indictment *does* contain a truth paragraph, the "stark contrast" rule applies. *Schulman,* and *Cowley,* both *supra.* The Third Circuit's corollary principle that the truth paragraphs must "track" the literal allegedly false testimony, *Tonelli, supra,* has been followed by the First Circuit, in *United States v. Finucan, supra,* but has apparently never been reflected in the decisions of any other circuits except in *United States v. Schmidt,* 711 F.2d 595, 597 (5th Cir. 1983), *cert. den.,* 464 U.S. 1041 (1984).

As the foregoing demonstrates, there is a critical need, which only this Court can effectively supply, for uniform and predictable rules under a unified approach that will permit lower federal courts to identify *any* imprecision

in perjury indictments and keep those courts appropriately alert to the dangers of such imprecision and the unfairness thereby posed to those accused under such charges, who may otherwise be "assumed into the penitentiary" for "perjury by implication."

## CONCLUSION

Accordingly, *certiorari* should be granted in this case, both to vindicate the wrong suffered by Petitioner, and also to articulate clear and discernable rules and procedures for *all* to follow in this murky and potentially perilous area which is so very susceptible to confusion and abuse. This Court's review is further required to vindicate congressional purpose by making the statutory right of recantation meaningful and efficacious.

DATED: February 4, 1988

Respectfully submitted,

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87-1335

No. .....

Supreme Court, U.S.
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In The

# Supreme Court of the United States

October Term, 1988

—o—

RONALD A. BRAVERMAN,

*Petitioner,*

vs.

UNITED STATES OF AMERICA,

*Respondent.*

—o—

## APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

—o—

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**APPENDIX A**

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

NOT RECOMMENDED FOR PUBLICATION

No. 86-3699

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NOT RECOMMENDED FOR
FULL-TEXT PUBLICATION

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| | |
|---|---|
| UNITED STATES OF AMERICA, | ON APPEAL |
| Plaintiff-Appellee, | FROM THE |
| v. | UNITED STATES |
| RONALD A. BRAVERMAN, | DISTRICT COURT |
| Defendant-Appellant. | FOR THE |
| | NORTHERN DISTRICT |
| | OF OHIO. |

(Filed September 25, 1987)

BEFORE: JONES and NORRIS, Circuit Judges; and COOK, District Judge.*

*Hon. Julian A. Cook, Jr., United States District Judge for the Eastern District of Michigan, sitting by designation.

ALAN E. NORRIS, Circuit Judge. Defendant, Ronald A. Braverman, appeals his convictions on six counts of perjury—of knowingly making materially false declarations while testifying under oath before a United States grand jury, in violation of 18 U.S.C. § 1623. Defendant entered conditional pleas of guilty, pursuant to Fed. R. Crim. P. 11, in order to preserve for appeal the trial court's adverse rulings on pretrial motions. The adverse determinations were denials of defendant's motions to dismiss the indictment for failure to charge the crime of perjury, and for ineffective representation by counsel before the grand jury. Defendant was sentenced to a term of imprisonment of one year and one day on each count, to run concurrently, and to consecutive $10,000 fines on each count, for a total fine of $60,000.

## I.

In September 1981, defendant was subpoenaed to appear as a witness before a grand jury of the Northern District of Ohio investigating Reuben Sturman for alleged violations of the Internal Revenue Code. Upon receipt of the subpoena, defendant obtained the services of a California attorney, experienced in defending those charged with violating tax laws.

The perjury indictment resulted from defendant's testimony before the grand jury on December 2 and 3, 1981. Prior to his giving testimony, the government obtained an order of formal use immunity under 18 U.S.C. §§ 6002 and 6003. Immunity was conferred upon defendant at the commencement of his appearance on December 2, 1981. He was compelled to give testimony, and was ad-

vised by the trial court that he had a right to consult with his attorney outside the grand jury room. At that time the government also made it clear that defendant was not the target of the grand jury's investigation.

Defendant's testimony proceeded throughout the afternoon of December 2, during which time it became apparent that it would be impossible for the government to conclude its examination on that day. At the conclusion of the December 2 session of the grand jury, defendant and his California counsel were advised that it would be necessary for defendant to reappear the following day. Because counsel had a conflicting obligation in Los Angeles he could not attend defendant's second day of testimony. A member of the local bar, who was a tax attorney and had little experience in criminal defense matters, was retained by defendant as substitute counsel. This local attorney met with defendant and his California counsel and they briefly discussed the matters under investigation, and defendant's immunity.

On December 3, local counsel sought to reschedule defendant's appearance before the grand jury, but the government objected on the ground that he had been granted immunity and would not be exposed to prosecution as a result of his testimony. The government continued its questioning. Although his California counsel had returned to Los Angeles, defendant was able to consult with him on one occasion, by telephone, during this second day of testimony.

On March 7, 1984, defendant was indicted on seven counts of perjury. Count Two of the indictment was dis-

missed by the trial court, pursuant to the government's stipulation that it failed to satisfy the standards enunciated by this court in *United State v. Eddy,* 737 F.2d 564 (6th Cir. 1984). Part C of Count Five of the indictment was also dismissed by the trial court since the government had not amended it to accurately reflect the grand jury testimony given by defendant.

II.

We consider first defendant's assertion that his sixth amendment right to counsel was violated because he was not "effectively" represented by his California lawyer, who was absent during part of his testimony and who failed to advise him of his right of recantation following that testimony. He also contends that, under the totality of circumstances, including his retention of local counsel who admittedly was inexperienced and was unable to render meaningful advice, due process requires that statements made before the grand jury be suppressed. In essence, then, defendant claims that he received ineffective assistance of counsel when he appeared before the grand jury, and that this requires reversal of his convictions.

It is a well-settled principle of constitutional law that the guarantee of the right to counsel found in the sixth amendment attaches when adversarial judicial proceedings have been instituted against an individual. *Powell v. Alabama,* 287 U.S. 45 (1932).

> For it is only then that the government has committed itself to prosecute, and only then that the adverse positions of government and defendant have solidified. It is then that a defendant finds himself faced with the prosecutorial forces of organized society, and im-

> mersed in the intricacies of substantive and procedural criminal law.

*Kirby v. Illinois*, 406 U.S. 682, 689 (1972).

Further, the Supreme Court has held that a witness before a grand jury cannot insist, as a matter of constitutional right, on being represented by counsel. *In re Groban*, 352 U.S. 330, 333 (1957). A witness may, however, have counsel available to him outside the grand jury room; the witness does have the right to leave the room to consult with his attorney during questioning. *United States v. Mandujano*, 425 U.S. 564, 581 (1976);[1] *United States v. George*, 444 F.2d 310, 314 (6th Cir. 1971).

No criminal proceedings had been instituted against defendant at the time he appeared before the grand jury. Hence, the sixth amendment right to counsel had not come into play. *Kirby*, 406 U.S. at 689-90; *Mandujano*, 425 U.S. at 581. As noted previously, defendant was advised by the

---

1. A four-justice plurality of the Court, Chief Justice Burger, Justices White, Powell, and Rehnquist, 425 U.S. at 581, suggested that a grand jury witness has no right to counsel, whatever. Justices Marshall and Brennan concurred in the result but took issue with the plurality's broad proscription, arguing that a grand jury witness is entitled to some degree of assistance from counsel. 425 U.S. at 602-09 (Stewart and Blackmun, JJ., concurring, 425 U.S. at 609). It is noteworthy that the concurrence of Justices Marshall and Brennan argued for extension of the right to counsel to include a witness who is testifying before the grand jury based upon the need to protect that witness' fifth amendment right against self-incrimination. In this case, defendant had been bestowed with use immunity; thus, the rationale for extension of the right to counsel had therefore been diminished by his having attained the prosecutorial immunity status. At best, the need for protection under the sixth amendment right to counsel appears to have attenuated significantly. *See Matter of Lowry*, 713 F.2d 616, 618 n.4 (11th Cir. 1983).

trial judge that he had the right to consult with his attorney. He was given adequate opportunity to exercise that privilege once the questioning began. Even if he had a sixth amendment right to counsel there is no merit in defendant's assertion that his right under the amendment was violated when, after consulting with an attorney outside the grand jury room, he returned to give perjurious testimony. Neither the sixth amendment right to counsel, nor the fifth amendment privilege against self-incrimination, provide protection for the commission of perjury. "Our system provides methods for challenging the government's right to ask questions—lying is not one of them. A citizen may decline to answer the question, or answer it honestly, but he cannot with impunity knowingly and willfully answer with a falsehood." *Bryson v. United States,* 396 U.S. 64, 72 (1969). Accordingly, we reject the view of the sixth amendment right to counsel urged upon us by defendant and find nothing in the record to preclude his conviction under its provisions.

We find equally without merit defendant's contention that under the totality of circumstances his conviction must be overturned because it was not in accordance with due process of law. Defendant's false testimony was not "induced by government tactics or procedures so inherently unfair under all the circumstances as to constitute a prosecution for perjury a violation of the Due Process Clause of the Fifth Amendment." *United States v. Mandujano,* 425 U.S. at 585 (Brennan, J., concurring [footnote omitted]); *see also United States v. Brown,* 666 F.2d 1196, 1199 (8th Cir. 1981), *cert. denied,* 457 U.S. 1108 (1982). Defendant does not contend that he was counseled to give false

testimony, nor does he demonstrate how effective assistance of counsel outside the grand jury room would have led him to tell the truth.

III.

We next consider whether the questions and answers from the grand jury proceedings which were set out in the indictment, when compared with the portion of the indictment setting out the truth of the matters required into, were sufficient as a matter of law to support the conviction for perjury.

Defendant was charged with making a false declaration before the grand jury: "(a) Whoever under oath . . . in any proceeding before . . . any . . . grand jury of the United States knowingly makes any false material declaration . . . shall be fined not more than $10,000 or imprisononed not more than five years, or both." 18 U.S.C. § 1623.

Defendant contends that the indictment charged him with perjury by implication. It is true that the statute does not make it a crime for a witness to knowingly make a material declaration from which one might imply a material fact that is false. *Bronston v. United States,* 409 U.S. 352 (1973); *United States v. Eddy,* 737 F.2d at 569. In *Bronston,* the witness was asked if he had any bank accounts in Swiss banks, and he truthfully answered "no" (his personal Swiss bank account had by then been closed). He was then asked, "Have you ever?," and he responded, "The company had an account there for about six months, in Zurich." *Bronston v. United States,* 409 U.S. at 354. That answer was literally true but, of course, misleading

since the witness had maintained his own Swiss account in the past. A unanimous Supreme Court held that a prosecution for perjury does not lie for an answer that is literally true but unresponsive to the question asked, even where the witness intended the questioner to be misled, and where the answer, by negative implication, was false.

Furthermore, because the essence of the crime is the knowledge of the witness that his testimony is false, where the question propounded to him admits of several plausible meanings the witness' knowledge cannot be adequately tested. *See United States v. Wall*, 371 F.2d 398, 400 (6th Cir. 1967). The question propounded to a witness must be parsed to determine if it was readily susceptible of a responsive reply, and if it adequately tested the witness' belief in the veracity of his answer.

We have carefully reviewed the language of the indictment charging the six counts of which defendant was convicted and, as to the first, third, and sixth counts, are of the opinion that they did not charge defendant with perjury by implication but, instead, were sufficient, as a matter of law, to support a conviction under 18 U.S.C. 1623.

In its fourth count, the indictment alleged that defendant testified falsely as follows:

> Q. Have you ever handled any sort of financial tranactions for Reuben Sturman?
>
> A. Outside of minor personal ones, no.
>
> Q. What do you consider minor?
>
> A. I'm talking about something under a few hundred dollars, like, you know, when he saw

> something he couldn't get it, I would purchase it for him.
>
> I know I bought him some cigars a couple of times, and everyone [*sic*] of these personal things have always been reimbursed.

The indictment then went on to allege that defendant knew that testimony was false since "he in fact was involved in a financial transaction involving Reuben Sturman's loan of $100,000 to Gerry Stockton." The phrase "handled any sort of financial transactions for" Sturman is less than precise, and suggests various interpretations. Certainly, one may be involved with another in a financial transaction without handling it for him. The burden is on the questioner to pin the witness down to the specific object of the questioner's inquiry. *Bronston v. United States,* 409 U.S. at 360. Because the questions and answers, especially when considered in the context of the truth alleged by the government in the indictment, were too ambiguous to test either the truth of the answers, or of defendant's knowledge of their falsity, the trial court erred in not dismissing Count Four.

Count Five alleged that the following testimony was false:

> Q. Now, you mentioned before that you did have some Swiss bank accounts?
>
> A. Yes.
>
> Q. Did you have more than one?
>
> A. No.
>
> Q. What bank did you have the account in Switzerland?
>
> A. I think it's at the Swiss Credit Bank?

Q. Where is that located?

A. Switzerland, in Zurich.

Q. So when you went to handle transactions with your Swiss bank account, you would go to Zurich.

A. Oh, yes.

Q. Do you still maintain that account?

A. Yes.

. . . .

Q. All right. How much money do you have in your Swiss bank account currently?

A. Somewhere around $200,000.

Q. That is currently being replenished by profits from Vending B.V.; is that correct?

A. Yes.

. . . .

Q. Is it fair to say that you have then maintained all of the money that you received from Stonerealm from the skim?

A. Yes.

Q. Is all that money still in your Swiss account?

A. Well, you spend a lot of it, but the majority was there at one time. If we are talking about the '74, '75 time frame, the money was still there. Its [*sic*] no longer.

Q. We are.

A. But the bulk of it is no longer.

Q. If we are going to cover the period 1974 through 1981, when the skim ceased—is that fair to say?

A. '79, '80.

. . . .

Q. Now, where specifically did you get the money for the downpayment? [*sic*]

A. From my Swiss account.

Q. Was that—that was a lump sum withdrawal?

A. Right.

Q. Did you personally go to Switzerland and withdraw the money?

A. I believe I did, and I sent it over in check form.

Q. You sent a check to Mr. Sturman?

A. Yes, but it was not in cash.

Q. You wire transferred?

A. No. It was like a cashier's check, a bank check.

Q. For $75,000 payable to whom?

A. Teddy Marche.

. . . .

Q. What bank did you draw the cashier's check on for the down payment?

A. I would imagine the Swiss Credit Bank.

Q. Was it the Swiss Credit Bank, or are you guessing it was?

A. I would say that's where my account was. That's where I would have drawn it.

This was said to be false since defendant knew (A) that he once had two other Swiss accounts; (B) that the account had been closed and had a zero balance; [Part (C) of Count Five was dismissed by the district court]; (D) that "[c]ontrary to the Defendant's testimony . . . that

from 1974 to 1980 or 1981 he deposited all of the skim money from Stonerealm Ltd. into his account at the Swiss Credit Bank, no such deposits were ever made into that account''; and (E) that contrary to his testimony that he had withdrawn $75,000 from his Swiss account to use as a down payment, no such withdrawal was made.

The problem with Part (D) of Count Five is that the questions and answers are too vague and ambiguous to support the government's allegation that defendant testified that he had deposited all of the skim money into his account at the Swiss Credit Bank. Accordingly, Part (D) should have been dismissed. We do, however, conclude that the questions and answers grounding Part (E) are sufficient to ground that charge since defendant, in the beginning of that excerpt of testimony, precisely identified the source of the down payment as his Swiss bank account. Had the latter part of the testimony been the only exchange relied upon by the government, it could not have supported the charge since it is unclear whether the witness was being asked for the source of the $75,000, or of the bank upon which a cashier's check was drawn. However, even if Part (E) as well as Part (D) had been dismissed, Parts (A) and (B) were sufficient to support a conviction, and the trial court's judgment of conviction under Count Five would therefore not be disturbed.

The seventh count pointed to this testimony as false:

> Q. Tell us how you capitalized Health Devices?
>
> . . . .
>
> A. . . . [W]hat I did, is a lot of the money that I had made over those previous years and had put into Swiss accounts and had put into Dutch

accounts and so on, I started transferring back to the United States, I started bringing back to the United States in cashier's checks and so on. I brought it back in cash, I brought it back however I could, and I kept investing it into the business as the business needed it, and there was a total capitalization of somewhere between five and six hundred thousand that I subsequently put into the business.

. . . .

Q. Were you the sole source of bringing the money into the country?

A. No. I once asked Mr. Marle to bring some money and Mr. Geerts.

Q. How much money did Mr. Marle bring into the country?

A. I believe together they brought in about $100,000.

Q. Would that have been in cash?

A. Yes.

Q. Did they obtain that money from your Swiss bank account?

A. Yes. I had it withdrawn for them and given to them.

The indictment went on to say that this was false because defendant knew that "Health Services was not capitalized with currency withdrawn from MR. BRAVERMAN'S Swiss account."

Although in the earlier part of his testimony defendant identified "Swiss accounts" and "Dutch accounts and so on" as the location of the money which he started transferring back to the United States, in the latter part

of his testimony he unequivocally identified the source of the money brought into the United States by Messrs. Marle and Geerts as his Swiss bank account. There being no ambiguity in that testimony, defendant's contention is not well-taken; as to that portion of the capitalization, defendant said it was withdrawn from his Swiss bank account.

The judgment of the district court is *affirmed in part and reversed in part,* and this cause is *remanded* to the district court with instructions to modify its judgment and sentence in a manner consistent with this opinion.

## APPENDIX B

MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

| | | |
|---|---|---|
| UNITED STATES OF AMERICA | ) | Criminal Action |
| | ) | No. CR84-34 |
| Plaintiff | ) | |
| | ) | |
| vs. | ) | MEMORANDUM |
| | ) | AND ORDER |
| RONALD A. BRAVERMAN | ) | |
| | ) | |
| Defendant | ) | |

ALDRICH, J.

(Filed July 17, 1985)

On March 7, 1984, the United States of America indicted Ronald A. Braverman on seven counts of perjury under 18 U.S.C. § 1623. Before the Court are Braverman's two motions to dismiss: a "Motion to Dismiss Indictment" pursuant to the limitations on perjury prosecutions set forth in *Bronston v. United States*, 409 U.S. 352 (1973), and *United States v. Eddy*, 737 F.2d 564 (6th Cir. 1984) ("the perjury motion"), and a "Motion to Dismiss Indictment on Grounds of Ineffective Assistance of Counsel and/or Unfair Government Tactics and Procedures" ("the ineffective assistance motion"). On reviewing the voluminous pleadings, this Court rules:

(1) Count II of the indictment is dismissed, pursuant to the government's concurrence that it fails to satisfy the standards enunciated in *Eddy;*

(2) Count V, subpart C will be dismissed unless, prior to trial, the government amends the indictment to reflect the fact that Braverman testified that he received "about $250,000, maybe a little less" (rather than "the sum of $250,000") from the sale of "his Amsterdam business" (rather than "his Amsterdam businesses").

(3) In all other respects, the perjury motion is denied.

(4) The ineffective assistance motion fails to satisfy the standards enunciated in *Strickland v. Washington,* — U.S. —, 104 S.Ct. 2052 (1984), and *Lockett v. Arn,* 740 F.2d 407 (6th Cir. 1984), and the motion is denied.

This Court reserves the right to set forth the reasons for this order in greater detail, on the record, at the time of trial.

IT IS SO ORDERED.

/s/ ANN ALDRICH
United States District Judge

## APPENDIX C

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT DENYING REHEARING AND SUGGESTION FOR REHEARING EN BANC.

No. 86-3699

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, | ) | |
| | ) | |
| Plaintiff-Appellee, | ) | |
| | ) | |
| v. | ) | |
| | ) | |
| RONALD A. BRAVERMAN | ) | O R D E R |
| | ) | |
| Defendant-Appellant | ) | |
| | ) | |

(Filed December 10, 1987)

BEFORE: JONES and NORRIS, Circuit Judges, and COOK*, United States District Judge

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

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* Hon. Julian A. Cook, Jr. sitting by designation from the Eastern District of Michigan.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman, Clerk

## APPENDIX D

### PROVISIONS OF TITLE 18 U.S.C. § 1623.

§ 1623. False declarations before grand jury or court

(a) Whoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(b) This section is applicable whether the conduct occurred within or without the United States.

(c) An indictment or information for violation of this section alleging that, in any proceedings before or ancillary to any court or grand jury of the United States, the defendant under oath has knowingly made two or more declarations, which are inconsistent to the degree that one of them is necessarily false, need not specify which declaration is false if—

(1) each declaration was material to the point in question, and

(2) each declaration was made within the period of the statute of limitations for the offense charged under this section.

In any prosecution under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the

defendant while under oath made irreconcilably contradictory declarations material to the point in any proceeding before or ancillary to any court or grand jury. It shall be a defense to an indictment or information made pursuant to the first sentence of this subsection that the defendant at the time he made each declaration believed the declaration was true.

(d) Where, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed.

(e) Proof beyond a reasonable doubt under this section is sufficient for conviction. It shall not be necessary that such proof be made by any particular number of witnesses or by documentary or other type of evidence. (Added Pub.L. 91-452. Title IV, § 401(a), Oct. 15, 1970, 84 Stat. 932, and amended Pub.L. 94-550, § 6, Oct. 18, 1976, 90 Stat. 2535.)

## APPENDIX E

REPRINT OF UNPUBLISHED DECISION IN *IN RE CRAVEN* (N.D. Cal. 1973), CASE NO. 72-16 RFP, MEMORANDUM AND ORDER FILED ON MARCH 30, 1973, AS REPORTED IN 13 Crim. L. Rep. 2100 (BNA, MAY 2, 1973).

### U.S. TRANSCRIPT REFUSAL JUSTIFIED GRAND JURY WITNESS' SILENCE

*California federal court orders witness purged of contempt imposed after refusal to testify.*

The Government's continued unwillingness to furnish a recalcitrant grand jury witness with a transcript of his testimony should he testify leads the U.S. District Court for Northern California, on remand from the Ninth Circuit, to purge the witness of the contempt in which it had found him.

This witness is not required to show particularized need for his own testimony. Besides, he has shown such need. Furthermore, grand jury secrecy is for the protection of witnesses, and this witness has waived his right of secrecy. The witness is entitled under 18 U.S.C. 1623 to correct false declarations, and he should also be protected against prejudicial inferences that might be drawn by the public or his employers. And there is no danger here that disclosure of the transcript to the defendant and his lawyer would lead any third party mentioned in his testimony to change his testimony or flee the jurisdiction. (In re Craven, 3/30/73)

*Digest of Opinion*: [Text] On January 17, 1973 witness Craven appeared before the Grand Jury but refused to answer questions propounded to him solely on the

ground that the Government declined to furnish him a transcript of his testimony to be then and there given. The Government has stated through the affidavit of an Assistant United States Attorney that it will respectfully continue to decline to furnish witness Craven a transcript of any testimony he might give before said Grand Jury.

* * *

This is not a case where a third party seeks to obtain the grand jury transcript of a witness. There the courts have required a showing of particularized need. United States v. Procter & Gamble Co., 356 U.S. 677 (1958); In Re Russo, 53 F.R.D. at 572.

The privilege of secrecy, as the government points out, is largely to encourage witnesses to testify without fear of retaliation. This privilege is that of the witness. Here, there is no doubt that the witness, a medical doctor, freely and voluntarily waived that right. Secrecy here is not necessary to encourage the witness's testimony.

A witness with a good memory or with stenographic skills could record the questions asked him and his answers to them. He is under no obligation of secrecy.

While the court does not feel that a showing of "particularized need" is required for the transcript to be furnished, under the circumstances of this case such a showing has been made here.

(1) 18 U.S.C. Section 1623 (as amended) (false declarations before a grand jury or court) allows a witness to correct false declarations without fear of prosecution if such a correction is made before "substantially affecting the proceedings" or "it has not become manifest that

such falsity has been or will be exposed." Furnishing the witness such a transcript will give the witness the opportunity to correct errors made in good faith, insure that his testimony is consistent with statements made to Federal Bureau of Investigation agents and help implement the Congressional purpose behind Section 1623. It was Congress' intent that Grand Jury should be more concerned with getting at the truth than with obtaining perjury convictions. See 1970 U.S. Cong. Code and Admin. News 4023, 4024. [See also] In Re Minkoff, Misc. No. 7800 (D. R.I. decided October 13, 1972) * * *

(2) The possibility of prejudicial inferences being drawn by the public from the extensive publicity and the fact that the questions asked the witness were read in open court during the contempt proceedings.

(3) The certainty that prejudicial inferences are being drawn by the petitioner's employers as indicated by the affidavit of his counsel.

Lastly the court can see no prejudice to the government or to third parties which could not be obviated by a protective order. First, the names of third parties referred to in the testimony can be substituted by appropriate letters of the alphabet. Second, the transcript could initially be seen only by the witness, his attorney, and his employer during the life of the Grand Jury. This will obviate the Government's conjecture that third parties will "piece together" references to them in the transcript and either change their testimony or flee the jurisdiction. This condition was imposed in In Re Minkoff, supra.

After the life of the Grand Jury the transcript may be made public as the witness is under no obligation of secrecy.

The Government has, however, shown no inclination to comply with the condition that it agree to furnish a transcript to witness Craven even under appropriate protective order. In light of witness Craven's affidavit that he is prepared to testify, his appearance before the Grand Jury to accomplish that end, and the Government's past and continuing refusal to furnish witness Craven a transcript of the testimony he was prepared to give, it is hereby ordered that Petitioner, PHILIP CRAVEN, is purged of the order of contempt entered by this court on October 22, 1972, and said order of contempt is vacated and set aside. [*End Text*]—Peckman, J.

(In re Craven; USDC Calif, 3/30/73)

## APPENDIX F

PETITIONER'S INDICTMENT
UNDER 18 U.S.C. § 1623.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

| | |
|---|---|
| UNITED STATES OF AMERICA, Plaintiff, v. RONALD A. BRAVERMAN, Defendant. | CASE NO. CR 84-34<br>JUDGE ALDRICH<br>VIOLATIONS: Title 18, U.S.C. Section 1623 |

(Filed March 7, 1984)

INDICTMENT

The Grand Jury charges that:

COUNT I

On or about December 2, 1981 and December 3, 1981, in the Northern District of Ohio, RONALD A. BRAVERMAN, the Defendant herein, having duly taken an oath that he would testify truthfully in a proceeding before the United States Grand Jury, which had been duly impanelled and sworn in the United States District Court for the Northern District of Ohio, did unlawfully and knowingly make certain false and material declarations as hereinafter described:

1. At the time and place aforesaid, the said Grand Jury was conducting an investigation into possible violations of Sections 7201 and 7206(1) of Title 26 of the United States Code relating to income tax evasion and subscribing to false income tax returns; violations of Section 371 of Title 18 of the United States Code relating to conspiracy to defraud the United States government; and violations of Sections 5322(a) and 5322(b) of Title 31 of the United States Code relating to failure to file foreign bank account reports.

2. It was material to the aforesaid investigation to determine the true nature of the Fabricora Establishment bank account (#54.95.13.248) at the Algemene Bank Nederland N.V. in Amsterdam. This included the identity of the person who opened and operated the account, the identity of those persons having signature authority over the account, and the purpose for which it was opened and operated in general and in regard to specific transactions.

3. At the time and place hereinabove specified in paragraph one, RONALD A. BRAVERMAN, the Defendant herein, appeared as a witness before said Grand Jury and, then and there being under oath, testified falsely before said Grand Jury with respect to the said matters as follows:

Grand Jury Transcript
December 2, 1981
p. 141, lines 16-25

Q. Are you familiar with the bank account called Fabricora Establishment?

A. Yes.

Q. Would you tell the Grand Jury what that is?

A. It was an account that I used to put money into Vending, and that was all I ever used it for, and there were like maybe four or five transactions. It was an account that Mr. Marle had and not myself.

* * *

p. 142, lines 1-18

A. I just used it to put money through there instead of investing cash into the corporation.

Q. So whose account—whose name was the account in then?

A. It was in my name. I was a signer on the account for a very short period of time, and Mr. Marle was on the account.

Q. Were you physically present at the time the account was open?

A. No.

Q. Who was, Mr. Marle?

A. Yes.

Q. He opened the account?

A. Yes.

Q. Later you signed a signature card which authorized you to deal in the account?

A. Correct.

* * *

p. 146, lines 20-25
p. 147, lines 1-8

Q. Over how long a period did you use that particular account?

A. Not long. Less than a year.

Q. What, if anything, did you do to withdraw your name from that account?

A. I don't know if I ever did. I just never used that account anymore.

I told him that I was—I had no use for it, and that if he wanted to close it, he could. I didn't know what he was going to do with it.

Q. All the money that you placed in that account passed through to the business?

A. Yes.

* * *

p. 148, lines 7-12

Q. So it is your testimony to the Grand Jury today that Mr. Marle opened that account?

A. That's correct.

Q. And later on you simply became authorized to use that account?

A. That's correct.

* * *

Grand Jury Transcript
December 3, 1981
p. 381, lines 24-25
p. 382, lines 1-4

Q. One last question. You testified yesterday in an unequivocal manner, that you did not open the Fabricora Establishment bank account?

A. Right.

Q. Do you stand by that testimony?

A. Right.

* * *

4. The aforesaid testimony of RONALD A. BRAVERMAN, the Defendant herein, as he then and there well knew and believed was not true in that:

A. Contrary to the Defendant's testimony that Henny Marle opened and operated the Fabricora Establishment bank account (p. 141, lines 16-25; p. 142, lines 9-18; p. 148, lines 7-12; p. 381, lines 24-25; p. 382, lines 1-4) it was the Defendant who opened the account and Henny Marle neither opened it nor was a signer on the account.

B. Contrary to the Defendant's testimony that he used the Fabricora Establishment account on four or five occasions over a period of less than a year to fund a corporation known as Vending B.V. (p. 141, lines 16-25; p. 142, lines 1-3; p. 146, lines 20-23) the Defendant operated the account for a period of five years, from 1976 to 1981, and engaged in many transactions, none of which involved transfers of funds to the Vending B.V. account.

All of the above in violation of Section 1623, of Title 18, United States Code.

The Grand Jury further charges that:

COUNT II

On or about December 2, 1981, in the Northern District of Ohio, RONALD A. BRAVERMAN, the Defendant

herein, having duly taken an oath that he would testify truthfully in a proceeding before the United States Grand Jury, which had been duly impanelled and sworn in the United States District Court for the Northern District of Ohio, did unlawfully and knowingly make certain false and material declarations as hereinafter described:

1. At the time and place aforesaid, the said Grand Jury was conducting an investigation into possible violations of Sections 7201 and 7206(1) of Title 26 of the United States Code relating to income tax evasion and subscribing to false income tax returns; violations of Section 371 of Title 18 of the United States Code relating to conspiracy to defraud the United States government; and violations of Sections 5322(a) and 5322(b) of Title 31 of the United States Code relating to failure to file foreign bank account reports.

2. It was material to the aforesaid investigation to determine the ownership of various corporations in Europe as well as MR. BRAVERMAN's business relationship with David Sturman.

3. At the time and place hereinabove specified in pararagraph one, RONALD A. BRAVERMAN, the Defendant herein, appeared as a witness before said Grand Jury and, then and there being under oath, testified falsely before said Grand Jury with respect to the said matters as follows:

Grand Jury Testimony
December 2, 1981
p. 148, lines 13-15

Q. Now, Mr. Braverman, do you know David Sturman?

A. Yes. He is Reuben Sturman's son.

• • •

p. 149, lines 5-23

Q. Did he have any involvement in the European businesses?

A. No, not to the best of my knowledge.

Q. You were never involved with him in Amsterdam?

A. Yes.

Q. You were?

A. Yes.

Q. Tell us about that.

A. It was no real involvement. I think Reuben wanted to get him involved in the business, and not necessarily in my business, but he wanted to get him involved in the adult business and to understand the adult business nationwide and so on, and he asked me if he could come over for a couple of weeks and work with me to understand the European front, and I said, "Fine."

He stayed in my house. He ate with me. There was no outlay of money on my part.

* * *

4. The aforesaid testimony of RONALD A. BRAVERMAN, the Defendant herein, as he then and there well knew and believed was not true in that:

A. Contrary to the Defendant's testimony (p. 149, lines 5-23) he (BRAVERMAN) and David Sturman were officers in corporations known as Societe Financiere Et Commerciale S.A. and Scarab International L.T.D., both of which operated in Europe; and BRAVERMAN and David Sturman were present at Board of Directors

and Stockholders meetings held in Switzerland on July 26, 1977 and October 6, 1978.

B. Contrary to the Defendant's testimony (p. 149, lines 5-23) he and David Sturman both had signature authority over the Fabricora Establishment bank account number 54.95.13.248 at the Algemene Bank Nederland N.V. Amsterdam, Netherland.

All of the above in violation of Section 1623 of Title 18, United States Code.

The Grand Jury further charges that:

COUNT III

On or about December 3, 1981, in the Northern District of Ohio, RONALD A. BRAVERMAN, the Defendant herein, having duly taken an oath that he would testify truthfully in a proceeding before the United States Grand Jury, which had been duly impanelled and sworn in the United States District Court for the Northern District of Ohio, did unlawfully and knowingly make certain false and material declarations as hereinafter described:

1. At the time and place aforesaid, the said Grand Jury was conducting an investigation into possible violations of Sections 7201 and 7206(1) of Title 26 of the United States Code relating to income tax evasion and subscribing to false income tax returns; violations of Section 371 of Title 18 of the United States Code relating to conspiracy to defraud the United States government; and violations of Sections 5322(a) and 5322(b) of Title 31 of the United States Code relating to failure to file foreign bank account reports.

2. It was material to the aforesaid investigation to determine the true nature of the Fabricora Establishment bank account (#54.95.13.248) at the Algemene Bank Nederland N.V. in Amsterdam. This included the identity of the person who opened and operated the account, the identity of those persons having signature authority over the acconut, and the purpose for which it was opened and operated in general and in regard to specific transactions.

3. At the time and place hereinabove specified in paragraph one, RONALD A. BRAVERMAN, the Defendant herein, appeared as a witness before said Grand Jury and, then and there being under oath, testified falsely before said Grand Jury with respect to the said matters as follows:

Grand Jury Transcript
December 3, 1981
p. 181, lines 8-25; p. 182, lines 1-5

Q. Mr. Braverman, referring to our conversation yesterday concerning the bank account Fabricora Establishment—

A. Correct.

Q. —do you recall that we discussed that yesterday?

A. Sure do.

Q. Can you tell the Grand Jury why it was that $40,000 was removed from that account and transferred to the United States for the downpayment on Reuben Sturman's son's house?

A. Can I tell you anything about it?

Q. Yes.

A. Absolutely not.

Q. Do you have any knowledge that that, in fact, was done?

A. No—excuse me. I have knowledge that a house was purchased. I have knowledge that David Sturman bought a house, yes.

Q. What you are indicating is that you had no independent knowledge of where the downpayment for that home came from; is that correct?

A. That's correct.

* * *

4. The aforesaid testimony of RONALD A. BRAVERMAN, the Defendant herein, as he then and there well knew and believed was not true in that:

A. Contrary to the Defendant's testimony that he had no independent knowledge of the source of the $40,000 downpayment for David Sturman's house (p. 181, lines 8-25; p. 182, lines 1-5) he had personal knowledge of the transfer of $40,000 from the Fabricora Establishment account to an escrow account for David Sturman in Cleveland, Ohio.

All of the above in violation of Section 1623 of Title 18, United States Code.

The Grand Jury further charges that:

## COUNT IV

On or about December 3, 1981, in the Northern District of Ohio, RONALD A. BRAVERMAN, the Defendant herein, having duly taken an oath that he would testify truthfully in a proceeding before the United States Grand Jury, which had been duly impanelled and sworn in the United States District Court for the Northern District of Ohio, did unlawfully and knowingly make certain false and material declarations as hereinafter described:

1. At the time and place aforesaid, the said Grand Jury was conducting an investigation into possible violations of Sections 7201 and 7206(1) of Title 26 of the United States Code relating to income tax evasion and subscribing to false income tax returns; violations of Section 371 of Title 18 of the United States Code relating to conspiracy to defraud the United States government; and violations of Sections 5322(a) and 5322(b) of Title 31 of the United States Code relating to failure to file foreign bank account reports.

2. It was material to the aforesaid investigation to determine the true nature of the Fabricora Establishment bank account (#54.95.13.248) at the Algemene Bank Nederland N.V. in Amsterdam. This included the identity of the person who opened and operated the account, the identity of those persons having signature authority over the account, and the purpose for which it was opened and operated in general and in regard to specific transactions.

3. At the time and place hereinabove specified in paragraph one, RONALD A. BRAVERMAN, the Defendant herein, appeared as a witness before said Grand Jury and, then and there being under oath, testified falsely

before said Grand Jury with respect to the said matters as follows:

Grand Jury Transcript
December 3, 1981
p. 360, lines 14-24

Q. Have you ever handled any sort of financial transactions for Reuben Sturman?

A. Outside of minor personal ones, no.

Q. What do you consider minor?

A. I'm talking about something under a few hundred dollars, like, you know, when he saw something and he couldn't get it, I would purchase it for him.

I know I bought him some cigars a couple of times, and everyone of these personal things have always been reimbursed.

4. The aforesaid testimony of RONALD A. BRAVERMAN, the Defendant herein, as he then and there well knew and believed, and was not true in that:

A. Contrary to the Defendant's testimony that he had never handled any financial transactions for Reuben Sturman, aside from minor matters under a few hundred dollars (p. 360, lines 14-24) he in fact was involved in a financial transaction involving Reuben Sturman's loan of $100,000 to Gerry Stockton of Gallery Art Asia, Los Angeles, California.

All of the above in violation of Section 1623 of Title 18, United States Code.

The Grand Jury further charges that:

## COUNT V

On or about December 3, 1981, in the Northern District of Ohio, RONALD A. BRAVERMAN, the Defendant herein, having duly taken an oath that he would testify truthfully in a proceeding before the United States Grand Jury, which had been duly impanelled and sworn in the United States District Court for the Northern District of Ohio, did unlawfully and knowingly make certain false and material declarations as hereinafter described:

1. At the time and place aforesaid, the said Grand Jury was conducting an investigation into possible violations of Sections 7201 and 7206(1) of Title 26 of the United States Code relating to income tax evasion and subscribing to false income tax returns; violations of Section 371 of Title 18 of the United States Code relating to conspiracy to defraud the United States government; and violations of Sections 5322(a) and 5322(b) of Title 31 of the United States Code relating to failure to file foreign bank account reports.

2. It was material to the aforesaid investigation to determine the true nature and extent of MR. BRAVERMAN's involvement with Swiss bank accounts. This included the number and location of such accounts, whether there were other signers on the accounts, and the purpose for which such accounts were opened and operated.

3. At the time and place hereinabove specified in paragraph one, DONALD A. BRAVERMAN, the Defendant herein, appeared as a witness before said Grand Jury and, then and there being under oath, testified falsely before said Grand Jury with respect to the said matters as follows:

Grand Jury Transcript
December 3, 1981
p. 220, lines 24-25
p. 221, lines 1-13

Q. Now, you mentioned before that you did have some Swiss bank accounts?

A. Yes.

Q. Did you have more than one?

A. No.

Q. What bank did you have the account in in Switzerland?

A. I think it's at the Swiss Credit Bank?

Q. Where is that located?

A. Switzerland, in Zurich.

Q. So when you went to handle transactions with your Swiss bank account, you would go to Zurich?

A. Oh, yes.

Q. Do you still maintain that account?

A. Yes.

* * *

p. 226, lines 17-25
p. 227, lines 1-13

Q. Let's talk about cash first.

A. I really don't remember, because I had it all transferred to my Swiss account. So I really don't—to me, whether it was a check or whether it was cash, I really didn't care what it was.

Q. You sold the business for roughly $600,000?

A. Yes.

Q. So your interest in that was $300,000?

A. I think that there were several debts that we had to pay off that 600,000. He bought the business free and clear, so, as I remember, I remember ending up with about $250,000, maybe a little less.

Q. Which was transferred immediately to your Swiss account?

A. No. It was by a couple of payments that were made subsequently over, I think, a one-year period.

Q. Where were the payments made?

A. Into my Swiss account.

Q. So everything went into the Swiss account?

A. Yes.

* * *

p. 284, lines 4-19

Q. Is it fair to say that you have then maintained all of the money that you received from Stonerealm from the skim?

A. Yes.

Q. Is all that money still in your Swiss account?

A. Well, you spend a lot of it, but the majority was there at one time. If we are talking about the '74, '75 time frame, the money was still there. Its no longer.

Q. We are.

A. But the bulk of it is no longer.

Q. If we are going to cover the period 1974 through 1981, when the skim ceased—is that fair to say?

A. '79, '80.

* * *

p. 319, lines 4-19

Q. Now, where specifically did you get the money for the downpayment?

A. From my Swiss account.

Q. Was that—that was a lump sum withdrawal?

A. Right.

Q. Did you personally go to Switzerland and withdraw the money?

A. I believe I did, and I sent it over in check form.

Q. You sent a check to Mr. Sturman?

A. Yes, but it was not in cash.

Q. You wire transferred?

A. No. It was like a cashier's check, a bank check.

Q. For $75,000 payable to whom?

A. Teddy Marche.

* * *

p. 315, lines 20-25
p. 316, line 1

Q. What bank did you draw the cashier's check on for the down payment?

A. I would imagine the Swiss Credit Bank.

Q. Was it the Swiss Credit Bank, or are you guessing it was?

A. I would say that's where my account was. That's where I would have drawn it.

* * *

p. 362, lines 6-15

Q. All right. How much money do you have in your Swiss bank account currently?

A. Somewhere around $200,000.

Q. That is currently being replenished by profits from Vending B.V.; is that correct?

A. Yes.

Q. Where else?

A. That's it.

Q. That's it?

A. Yes.

4. The aforesaid testimony of RONALD A. BRAVERMAN, the Defendant herein, as he then and there well knew and believed, was not true in that:

A. Contrary to the Defendant's testimony (p. 220, lines 24-25; p. 221, lines 1-13) that he had only one Swiss bank account and it was located at the Swiss Credit Bank, he then and there knew that he also had two other Swiss accounts located at the Swiss Bank Corporation in Zurich, Switzerland (account numbers PO-365.834 and PO-362-658), and said additional accounts existed in time simultaneously, in whole or in part, with the time in which his account at Swiss Credit Bank was open.

B. Contrary to the Defendant's testimony (p. 221, lines 1-13; p. 362, lines 6-15) that the account at Swiss Credit Bank was still maintained as of the date of his testimony (December 3, 1981) and held a balance of $200,000, the account had in fact been closed in March, 1981 and had a zero balance.

C. Contrary to the Defendant's testimony (p. 226, lines 17-25; p. 227, lines 1-13) that he deposited the sum of $250,000 from the sale of his Amsterdam businesses into his account at the Swiss Credit Bank, no such deposits were ever made into that account.

D. Contrary to the Defendant's testimony (p. 284, lines 4-19) that from 1974 to 1980 or 1981 he deposited all of the skim money from Stonerealm Ltd. into his account at the Swiss Credit Bank, no such deposits were ever made into that account.

E. Contrary to the Defendant's testimony (p. 310, lines 4-19) that he had withdrawn $75,000 from his account at Swiss Credit Bank to use as a downpayment for the purchase of Marche Manufacturing Company, no such withdrawal in the amount of $75,000 was ever made from that account.

All of the above in violation of Section 1623 of Title 18, the United States Code.

The Grand Jury further charges that:

COUNT VI

On or about December 3, 1981, in the Northern District of Ohio, RONALD A. BRAVERMAN, the Defendant here-

in, having duly taken an oath that he would testify truthfully in a proceeding before the United States Grand Jury, which had been duly impanelled and sworn in the United States District Court for the Northern District of Ohio, did unlawfully and knowingly make certain false and material declarations as hereinafter described:

1. At the time and place aforesaid, the said Grand Jury was conducting an investigation into possible violations of Sections 7201 and 7206(1) of Title 26 of the United States Code relating to income tax evasion and subscribing to false income tax returns; violations of Section 371 of Title 18 of the United States Code relating to conspiracy to defraud the United States government; and violations of Sections 5322(a) and 5322(b) of Title 31 of the United States Code relating to failure to file foreign bank account reports.

2. It was material to the aforesaid investigation to determine the ownership of a company known as Videorama B.V. in Amsterdam, The Netherlands, to determine what involvement if any RONALD A. BRAVERMAN had with the company and to determine what if any knowledge BRAVERMAN had relative to the business of Videorama B.V.

3. At the time and place hereinabove specified in paragraph one, RONALD A. BRAVERMAN, the Defendant herein, appeared as a witness before said Grand Jury and, then and there being under oath, testified falsely before said Grand Jury with respect to the said matters as follows:

Grand Jury Transcript
December 3, 1981
p. 291, lines 20-25
p. 292, lines 1-4

Q. Are you familiar with the company by the name of Videorama?

A. I have heard of the company, yes.

Q. What do you know about that company?

A. It's a company that is affiliated with Mr. Geerts, and is in the Video business. They are in the sale of video pre-recorded tapes.

Q. In the adult entertainment pre-recorded tapes—

A. Both.

* * *

p. 292, lines 10-25
p. 293, lines 1-10

Q. Do you know who owns that corporation?

A. No.

Q. Have you ever had any business dealings with the corporation?

A. No—excuse me. Yes, I have.

Q. On what basis?

A. When I was in need of blank tapes. During the time I was in Hong Kong, I got some blank tapes to them and sent it to them to test.

Q. How recent was that?

A. That happened to have been in October. We are talking about 12 tapes and a total of $60.

Q. That was when Reuben Sturman accompanied you in Hong Kong?

A. Yes.

Q. Was he at all involved in that transaction?

A. No. As it is, Mr. Geerts had told me—told me he was in need of video tapes and heard there were video tapes in the Far East, and if I came across any, he would appreciate it if I got him some so that the quality could be checked. I'm not in the video tape business with the tapes along with the film.

Q. That is your sole contact with Videorama?

A. Yes.

4. The aforesaid testimony of RONALD A. BRAVERMAN, the Defendant herein, as he then and there well knew and believed, was not true in that:

A. On February 7, 1980, he caused the sum of $78,000 Dutch florins (U.S. $40,979.30) to be transferred by check from account number 603.859.60R in the name of Societe Financiere Et Commerciale S.A., at the Union Bank of Switzerland, to Videorama B.V.

B. In February, 1979 the Defendant caused the sum of $25,000 to be transferred from the Fisher Establishment account number 54.95.10.060 at the Algemene Bank, Nederland N.V. to the account of Videorama B.V.

C. About April, 1980, Videorama B.V. paid the sum of $12,650.00 to the Fabricora Establishment account

number 54.95.13.248, at the Algemene Bank Nederland, N.V., on which account the Defendant RONALD A. BRAVERMAN was a signatory.

All of the above in violation of Section 1623 of Title 18, United States Code.

The Grand Jury further charges that:

COUNT VII

On or about December 3, 1981, in the Northern District of Ohio, RONALD A. BRAVERMAN, the Defendant herein, having duly taken an oath that he would testify truthfully in a proceeding before the United States Grand Jury, which had been duly impanelled and sworn in the United States District Court for the Northern District of Ohio, did unlawfully and knowingly make certain false and material declarations as hereinafter described:

1. At the time and place aforesaid, the said Grand Jury was conducting an investigation into possible violations of Sections 7201 and 7206(1) of Title 26 of the United States Code relating to income tax evasion and subscribing to false income tax returns; violations of Section 371 of Title 18 of the United States Code relating to conspiracy to defraud the United States government; and violations of Sections 5322(a) and 5322(b) of Title 31 of the United States Code relating to failure to file foreign bank account reports.

2. It was material to the aforesaid investigation to determine the true ownership of a company known as Health Devices Inc., of Los Angeles, California, allegedly owned by the Defendant RONALD A. BRAVERMAN,

and to determine what role if any was played by Reuben Sturman in the ownership and operation of the company. It was also material to determine the source of funds used to purchase the company from Marche Manufacturing Company, as well as the source of funds for further capitalization of the company after its sale.

3. At the time and place hereinabove specified in paragraph one, RONALD A. BRAVERMAN, the Defendant herein, appeared as a witness before said Grand Jury and, then and there being under oath, testified falsely before the said Grand Jury with respect to the said matters as follows:

Grand Jury Transcript
December 3, 1981
p. 319, lines 19-25
p. 320, lines 1-17

Q. Tell us how you capitalized Health Devices?

A. Poorly.

Q. Well, be very explicit now in that regard.

A. I'm going to try and give it to you.

Health Devices was only in the manufacturing of the rubber goods business. It was a relatively small business, only doing a couple hundred thousand dollars a year. I wanted to keep body massagers, vibrators, lingeries, creams, and so on. There are many different aspects of the business that Teddy Marche was not in.

Therefore, what I did, is a lot of the money that I had made over those previous years and had put into Swiss

accounts and had put into Dutch accounts and so on, I started transferring back to the United States, I started bringing back to the United States in cashier's checks and so on. I brought it back in cash, I brought it back however I could, and I kept investing it into the business as the business needed it, and there was a total capitalization of somewhere between five and six hundred thousand that I subsequently put into the business.

• • •

p. 321, lines 1-14

Q. Were you the sole source of bringing the money into the country?

A. No. I once asked Mr. Marle to bring some money and Mr. Geerts.

Q. How much money did Mr. Marle bring into the country?

A. I believe together they brought in about $100,000.

Q. Would that have been in cash?

A. Yes.

Q. Did they obtain that money from your Swiss bank account?

A. Yes. I had it withdrawn for them and given to them.

4. The aforesaid testimony of RONALD A. BRAVERMAN, the Defendant herein, as he then and there well knew and believed, was not true in that Health Devices was not capitalized with currency withdrawn from MR. BRAVERMAN's Swiss account.

All of the above in violation of Section 1623 of Title 18, United States Code.

This is a True Bill.

/s/ FOREMAN

/s/ J. WILLIAM PETRO
United States Attorney
Northern District of Ohio

/s/ STEVEN R. OLAH
Special Attorney
Criminal Division
U.S. Department of Justice